

REMARKS

Claims 1-5, 9-12 and 17 have been examined. Claims 1, 9 and 17 have been rejected under 35 U.S.C. § 102(b), and claims 2-5 have been rejected under 35 U.S.C. § 103(a). Also, the Examiner continues to maintain that claims 10-12 contain allowable subject matter.

II. Rejection under 35 U.S.C. § 102(b) over U.S. Patent Appl. Publ. 2002/0122746 to Yamamori et al. (“Yamamori”)

Claims 1, 9 and 17 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Yamamori.

An Interview between the Examiner, the Examiner’s Supervisor and the undersigned was conducted on January 10, 2008. Comments regarding the Interview are set forth below. Such comments constitute a Statement of Substance of Interview.

A. Claim 1

In the August 15, 2007 Amendment, Applicant argued that element 59 of Yamamori would only be pivotable in the lateral direction, such that element 59 is not “pivotable in a direction approaching the mouth and a direction departing from the mouth” as set forth in claim 1. In response, the Examiner maintains that element 59 could be pivotable or movable in a clockwise/counterclockwise direction such that it moves towards and away from the mouth of the user (pg. 6 of the Office Action).

The above issue was discussed during the January 10, 2008 Examiner Interview. Specific language for distinguishing over the movement directions shown in Yamamori was discussed. In view of the discussions, claim 1 is hereby amended to recite, “...the mouth guide

being supported on the airway case so as to be pivotable in a direction approaching a face of the living body and a direction departing from the face when the airway case is positioned on the face..”

Applicant submits that the recitations of claim 1 in no way attempt to positively claim the living body or face and were indicated as being acceptable during the Examiner Interview (albeit requiring further search and consideration).

Turning to the merits of the rejection, Applicant submits that even if the alleged mouth guide 59 of Yamamori is rotated clockwise or counterclockwise, the element remains over the face such that it does not actually move in a direction that departs away from the face (or towards the face) when the airway case is positioned on the face.

At least based on the foregoing and in view of the discussions conducted during the January 10, 2008 Examiner Interview, Applicant submits that claim 1 is patentable over the cited reference.

B. Claim 9

Applicant submits that claim 9 is patentable at least by virtue of its dependency upon claim 1.

C. Claim 17

Since claim 17 recites features that are analogous to the features recited in claim 1, Applicant submits that claim 17 is patentable for at least analogous reasons as claim 1.

III. Rejection under 35 U.S.C. § 103(a) over Yamamori in view of U.S. Patent Appl. Publ. 2004/0003816 to Cannon (“Cannon”)

Claims 2, 4 and 5 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yamamori in view of Cannon. Since Cannon fails to cure the deficient teachings of Yamamori, in regard to claim 1, Applicant submits that claims 2, 4 and 5 are patentable at least by virtue of their dependency.

IV. Rejection under 35 U.S.C. § 103(a) over Yamamori in view of Cannon in further view of U.S. Patent No. 6,739,218 to Yang (“Yang”)

Claim 3 has been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yamamori in view of Cannon and further in view of Yang. Since Yang and Cannon fail to cure the deficient teachings of Yamamori, in regard to claim 1, Applicant submits that claim 3 is patentable at least by virtue of its dependency.

V. Allowable Subject Matter

As set forth above, the Examiner has indicated that claims 10-12 contain allowable subject matter.

VI. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the

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U.S. Appl. No.: 10/779,852

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Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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